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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(APPELLATE JURISDICTION)

Monday, the Twenty Ninth day of January

Two Thousand Seven

PRESENT

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE M. JAICHANDREN

O.S.A.NO.93 OF 1991

1. P. Gopirathnam
2. P. Lavakumar
3. P. BasanthKumar
4. Rani Rathnam
5. Satya Ranganathan .. Appellants
(Defendants Nos. 2 to 6)

Vs.

Ferrodous Estate (Pvt) Ltd.
Rep. by its Director
Sri.M. Haja Nazamudeen .. Respondent (Plaintiff)

(Cause title amended as per order dt.12.7.2000 in CMP.Nos.8212 & 8213 of 2000.)

Appeal under order 36 Rule 1 of O.S.Rules read with clause 15 of the Letters Patent against the Judgment of the Honourable Mr.Justice Maruthamuthu,dated 15.3.1991 and passed in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in C.S.No.130/1981.

ORDER: The OS Appeal coming on for hearing on Thursday the Thirteenth day of July 2006 upon perusing the Grounds of Appeal, the Order of the Honourable Mr.Justice Maruthamuthu dated 15.3.1991 and made in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in CS No.130 of 1981 and all other papers material to this case upon perusing the orders of this Court dt. 8.12.1997, dt. 3.3.1999, dt.19.6.2001 and findings of the single Judge on 30.9.2003 and upon hearing the arguments of Mr.R.Thiagarajan,Senior Counsel for

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Mr.P.N.Raman, Advocate for the Appellants and of Mr.R.Muthukumaraswamy, Senior Counsel for Mr.V.Ramajagadeesan, Advocate for the Respondents, and having stood over for consideration till this day this Court while Allowing the Appeal Order & Decree as follows:

J U D G M E N T

P.K. MISRA, J

Defendants are the appellants against the judgment and decree of the learned single Judge directing the defendants to execute sale deed. Such suit for specific performance was filed by the plaintiff / respondent, which was a private limited company engaged in the construction of multi-storeyed building flats.

2. Defendant No.1 is the father (now deceased) and Defendant Nos.2 to 4 are the sons. On the death of Defendant No.1, the other heirs were brought on record as Defendant Nos.5 and 6. The agreement on which specific performance sought for was dated 12.6.1980. The extent of schedule property is 8 grounds and 2354 sq.ft. According to the case of the plaintiff, the defendants agreed to sell such property described in the schedule free from all encumbrances for a net price of Rs.5,40,000/-, out of which a sum of Rs.1 lakh was deposited by the plaintiff with Auditor M/s. Venkataraman & Co., and balance of Rs.4,40,000/- was agreed to be paid by the plaintiff to the Syndicate Bank to discharge the loan borrowed by the defendants on the mortgage to the said bank, subject to the said bankers giving certificate of discharge. In the agreement it was further indicated that the defendants should arrange to secure income tax clearance certificate, permission from competent authority under the Urban Land Ceiling Act and such other permits as may be necessary for completing the transaction. It was indicated that the sale transaction should be completed within a period of six months from the date of the agreement, which was subject to the defendants obtaining the necessary clearance certificate from the appropriate authorities and giving vacant possession. Under Clause10 of the agreement, it was agreed that in the event of any default by the defendants, the plaintiff shall be entitled to without prejudice to the right of specific performance to the refund of the advance of Rs.1,00,000/- and damages. It was further indicated that if the plaintiff commits any default, the defendants shall be entitled to forfeit the advance of Rs.1,00,000/-. It was further stated in the plaint that out of Rs.1,00,000/- deposited with the Auditor under the direction of the defendants, a sum of Rs.65,000/- had already been received by the defendants. It is further averred that the plaintiff was always ready and willing to deposit the balance of sale price before the court to show its bonafide. It was indicated that the defendants were bound to secure income tax clearance certificate and

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permission from the competent authorities which were pre-requisite for completion of the sale transaction and thereafter to complete the sale transaction in accordance with the terms and conditions. But, the defendants were evading to do so and, on the other hand, trying to alienate the property to other persons ignoring the agreement for sale. The suit was thus filed in the month of February, 1981.

3. A joint written statement was filed on behalf of the defendants 1 to 3 and a separate written statement was filed by Defendant No.4. The substance of the written statement of the defendants 1 to 3 was to the effect that one G. Narayanasamy, who was a partners of M/s. Venkataraman & Co., and his brother were holding substantial interest in the plaintiff's company. The said auditors,being the auditors of the defendants were in a fiduciary position with the defendants and they did not disclose that they were negotiating or acting on behalf of the company wherein they had substantial shares. At the time of the agreement, Syndicate Bank had obtained a mortgage decree on the suit property for about Rs.7.8 lakhs and until the said sum was paid, the property could not have been sold free of encumbrances. The price offered to the defendants was Rs.1,02,000/- per ground and therefore the allegation that the total consideration was Rs.5,40,000/- was incorrect. While admitting that a sum oif Rs.1 lakh has been kept with M/s. Venkataraman & Co., a sum of Rs.65,000/0 had been paid to Defendant No.1 is denied. It was further stated that the agreement was signed by the defendants 1 and 2 alone, but subsequently an endorsement was made by G.Narayanaswamy in his own handwriting as if the first defendant was signing the agreement for and on behalf of the joint family, including the fourth defendant, which was not authorised. Since the decree of Syndicate Bank was for a much higher amount, obviously discharge could not have been obtained for Rs.4,40,000/- and, therefore, the agreement was impossible to be performed. The allegation that the plaintiff was always ready and willing to perform its part of the contract was denied. The agreement for sale was not for any family necessity.

4. By an additional written statement, it was contended that the plaintiff had unfair advantage over the defendants and the performance of the contract on the terms contained in the agreement would involve hardship on the defendants and would be inequitable and, therefore, the discretionary power should not be exercised to enforce such an agreement. It was specifically stated :-

> "2. In any event these defendants submit that the plaintiff is not entitled to any decree since the plaintiff is not entitled to purchase more than the prescribed limit of 500 sq.metre under the provision of Tamil Nadu Urban Land Ceiling Act and hence the agreement is void as violating the provisions of statute."

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5. The fourth defendant in his written statement specifically stated that the scheduled property was a joint family property and as such he had interest in such property and he he not being a signatory to such agreement, he was not bound by the agreement.

6. On the above pleadings, the following issues were framed :-

"1. Whether the suit agreement of sale dated 12.6.1990 is true ?

2. Whether the sale price agreed between the parties is Rs.5,40,000/- and whether an advance of Rs.1,00,000/- was paid to the defendants and whether out of it Rs.65,000/- was received by the defendants ?

3. Whether the agreement for sale is not valid and enforceable for the reason of material alteration in the agreement and that it is not a concluded contract ?

4. Whether the suit agreement of sale is not binding on the 4th defendant ?

5. Whether the plaintiff is not entitled to purchase more than 500 sq.metres under the Tamil Nadu Urban Land Ceiling Act and whether the suit agreement is void on that account ?

6. Who among the parties have committed breach of the agreement ?

7. Whether the plaintiff is entitled to the specific performance of the suit agreement of sale or to get only compensation ?

8. To what relief are the parties entitled ?

7. While dealing with Issue Nos.1 to 7 together, the learned single Judge came to the conclusion that loan had been obtained by the defendants from Syndicate Bank on the security of the suit property and other properties. There were instances to show that there was necessity on the part of the defendants to sell the disputed property in 1980. The agreement had been executed for sale of the property for Rs.5,40,000/-, out of which Rs.1,00,000/- was deposited with P.W.1., in which the first defendant had received Rs.65,000/- and balance was available with P.W.1 as the first defendant had refused to receive the same. There was no material alteration in the agreement. It was further held :-

"21. ... The mortgage might be in respect of a large extent of about 30 grounds and a decree (Ex.D-8) also might have been passed on the mortgage for a sum exceeding Rs.5,40,000/-. But, it cannot be said that the plaintiff

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would not be in a position to get a release of the suit property which is a portion of the hypotheca."

It was further held that the plaintiff was always ready and wiling to perform its part of the contract, but the defendants had failed to secure the Income Tax clearance certificate and permission from the competent authorities to complete the sale. It was further held :-

> "22. ... It has to be pointed out here, that even if there is a clause in Ex.P-2 stating that the defendant should arrange for securing the permission of the competent authority and if the same has not been obtained by the defendants, it cannot be a ground for the defendants to refuse the sale of the suit property. It is open to the plaintiff (the purchaser) to get a sale of the entire suit property measuring 8 grounds and 2354 sq.feet even if it exceeds 500 sq.metres. The plaintiff may get the sale with that risk."

8. On the basis of such conclusion, the learned single Judge decreed the suit directing the defendants 2 to 6 to execute the sale deed. It may be noted that pending the suit, a sum of Rs.4,40,000/- has been deposited and the learned single Judge observed that it would be open to the defendants 2 to 6 to withdraw such amount on execution and registration of the sale deed. The present appeal is against such judgment and decree.

9. Learned Senior Counsel appearing for the appellants / defendants has contended as follows :-

(1) In view of the provisions contained in Section 6 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, the agreement in question must be considered as void as the agreement was in respect of vacant land in excess of the ceiling.

(2) The materials on record do not indicate that the plaintiff was ready and willing to perform its part of the contract.

(3) Since the property covered under the agreement along with other properties had been mortgaged with Syndicate Bank, which had obtained a decree against the defendants, unless the land was released by clearing the debt, such sale deed could not be effected and the amount agreed to be paid being obviously less than the amount required to clear the debt of the bank, such transaction cannot be completed.

(4) Keeping in view the facts and circumstances of the case and particularly long passage of time, it would be most inequitable to enforce such an agreement and instead the plaintiff can be adequately compensated.

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10. While considering the first submission, it is necessary at this stage to notice certain aspects which have transpired during pendency of the appeal. While the appeal was being heard by a Division Bench on an earlier occasion, such Division Bench referred the question relating to validity or otherwise of the agreement to a larger Bench by order dated 8.12.1997. The Full Bench of this Court examined the question and answered the reference in the decision reported in 1999(II)CTC 181. Since such opinion has been furnished by the Full Bench in the very case arising between the parties or even otherwise such decision being that of a Full Bench, is obviously binding on us as well as on the parties at least for the time being and this Bench is bound to follow the opinion of the Full Bench. It is therefore necessary to refer to the relevant opinion of the Full Bench.

11. In paragraph 6 of such opinion, after referring to earlier Division Bench decisions of the High Court rendered either under Section 6 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, hereinafter referred to as "the Act" or similar provisions contained in the Urban Land (Ceiling and Regulation) Act, 1976 (Central Act), it was summarised that "specific performance of agreement for sale cannot be enforced by Court since that will be defeating the Law and against Public Policy". Thereafter the Full Bench proceeded to consider the question referred to by the Division Bench. After referring to either decisions of the Madras High Court either under the State Act or the Central Act or in connection with parimateria provisions contained in other Acts, it was observed :-

> "19. In all these decisions, this Court has held that specific performance of agreement for sale cannot be enforced by Court since that will be defeating the Law and against Public Policy."

12. Thereafter analysing various decisions on the scope of Section 23 of the Contract Act and applicability of the doctrine of "the Public Policy", it was observed :-

> "24. From these decisions, it is clear that even if the contract by itself may not be illegal but its enforcement if violates any law that will be a ground to hold that the agreement cannot be enforced. We have already extracted preamble of State Act and also the decision reported in AIR 1979 SC 1415, why the Act was enacted. It is to prevent concentration of Urban Land in the hands of few persons and speculation in profiteering therein. It is to implement this provision of the Act,

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this provision under Section 6 and 11(4) of the Act are enacted. If the seller is having land in excess than the ceiling limits and if it is ultimately found that the Act also applies permitting such persons to execute sale deed pursuant to the agreement of sale, it will be defeating or circumventing the provisions of the Act. Equitable distribution of land, which is contemplated under the provisions may not be possible if the sale is allowed to take place. The intention is also very clear that third party right should not be created, which is likely to affect him also. If by enforcement of contract, if it amounts to subverty or circumvent law, court cannot be party to such enforcement. Court will have to discountenance the practice and it will have to safeguard the foundation of Society.

25. The question whether only completed transactions are contemplated under Section 6 of the Act and therefore enforcement of agreement for sale is not a bar is also an argument without any merit. It is true that under the Act, no person is entitled to hold more than the ceiling limit as prescribed under Section 4 of the Act. Argument is that purchaser is not holding any land on the basis of an agreement unless he gets some title. It still continues only with vendor. Therefore, there is no prohibition in enforcement of contract. Section 6 prohibits transfer by a person holding land in excess of ceiling limits. The matter will have to be considered taking into consideration the rights of seller and if that person holds more land than prescribed under Section 5, such transfer shall be deemed to be null and void. The prohibition under Section 6 is for transferring the land and consequently declares that any violation of law shall be deemed to be null and void. Section 6 contemplate both proposed transfer and completed transfer. An agreement of sale is also affected by Section 6 of the Act."

13. Subsequently it was further observed :-

"31. If the principles in these cases are applied, it follows that various decisions of this Court are rightly decided and do not require reconsideration."

14. While distinguishing the decision of the Supreme Court in AIR 1968 SC 1358 (JAMBU RAO SATAPPA KOCHERI v. NEMINATH APPAYYA HANAMANNAYAR), which decision was relied upon by the Division Bench for referring the question, the Full Bench further observed :-

"36. In this connection, it is safe to rely on the

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decision reported in *Sardar Singh v. Krishna Devi,* 1994(4) SCC 18 wherein in paragraph 14 of the Judgment, their Lordships held thus,

> "... The grant of relief of specific performance is discretionary. The circumstances specified in Section 20 are only illustrative and not exhaustive. The court would take into consideration the circumstances in each case, the conduct of the parties and the respective interest under the contract."

Why I am referring to this decision is, learned counsel for the plaintiff argued that under Section 20(4) of Specific Relief Act which says that the Court shall not refuse to any party specific performance of contract merely on the ground that contract is not enforceable at the instance of party. Section 20 deals with discretionary powers of the Court. It is while exercising discretion, the Act says that vendor cannot contend that the Contract cannot be enforceable. When there is no question of exercising discretion and when the transaction is prohibited, Section 20(4) cannot apply. Even if such argument is accepted, in the decision cited "interest of the party" also can be taken into consideration, while exercising discretion.

...

38. It is true that the Act is a self-contained Code with regard to urban lands and ceiling provisions. It is also true that there are authorities to decide as to whether transaction is valid or invalid. Question of valid or invalid transaction will apply only regarding completed transaction. When Section 6 prohibits even proposed transfer, question of considering validity or invalidity does not arise and the consequences are also already declared by the Act as null and void. It takes as if there is no transaction at all in the eye of law."

15. While considering the Full Bench decision of the Gujarat High Court reported in AIR 1984 GUJ.145(FB) (*Shah Jitendra Nanalal v. Patel Lallubhai Ishverbhai)*, upon which reliance was also placed by the Division Bench while referring the matter, it was observed :-

> "We do not think that the decision therein could be applied so far as Tamil Nadu Act is concerned. Exemption under Section 21 can be applied only by vendor and it is for him exemption is granted. While considering suit for specific performance, Court is only concerned whether purchaser has come to Court for enforcing the agreement in

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terms thereof. Asking vendor to get exemption and then to execute the agreement will be deviating from the terms of contract and the Court will not enforce such a contract. That will mean that purchaser is not willing to purchase the land as per agreement, but only with deviation, i.e., Vendor must get exemption and execute the sale deed.

41. ... We cannot subscribe the said view, for, granting decree for specific performance of contract itself being discretionary. Apart from the sale, when a transaction is only after obtaining exemption or permission from another authority, over which Court has no control, the relief of specific performance usually is not granted. While giving such direction, it will be going beyond contract and if ultimately exemption is refused, in effect, the decree will become waste paper. While exercising discretion, the Court will have to see whether it could pass executable decree and while exercising discretion, these factors are also considered for granting relief. The decision reported in Shoba Viswanathan v. D.P. Kinggley, 1996(1) LW 721 in paragraphs 36 and 37 of the judgment support the view, which we have taken."

16. Ultimately, the reference was answered as follows :-

"42. Therefore, we answer the reference as follows:

Since provisions of Bombay Tenancy and Agricultural Lands Act are entirely different from that of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, various Bench decisions of this Court, wherein it was held that a decree for specific performance of contract cannot be granted, if it violates Section 6 of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 do not require reconsideration.

We also hold that Section 6of the Act not only prohibits a completed transfer but also a proposed transfer.

We also hold that a decree for specific performance of contract cannot be granted conditionally upon vendor satisfying certain conditions, if it is not part of the agreement."

17. After such opinion was rendered by the Full Bench, the Division Bench by its judgment dated 19.6.2001 called upon the learned single Judge to render a finding on the question as to whether extent of 8 grounds and 2354 sq.ft., which is the subject matter of the agreement for sale, was held by the defendants in excess of the ceiling limit applicable to them and as to whether that extent could have been sold if at all only with the permission of the authorities under the Act. Thereafter, the findings have been

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rendered by the leaned single Judge on the basis of the existing evidence on records as no further evidence had been adduced by either party. Learned single Judge has concluded as follows :-

> "4. ... So there cannot be any dispute that the subject matter of the suit viz., 8 grounds and 2354 sq.ft. stands obviously in excess of the ceiling limit under the said Act. Further, it is to be noted that irrespective of the question whether the plaintiff should get permission of the Urban Land Ceiling authorities or the defendant should get the permission from such authorities before completing the sale transaction, the fact remains that the subject matter of the suit stands in excess of the ceiling limit. So, it is not the concern of this court now on the question as to who is at fault in not having obtained permission of the Urban Land Ceiling authorities. The relevant question now is to the effect that whether the subject matter of the suit viz., 8 grounds and 2354 sqft of land stands as excess within the meaning of the Tamil Nadu Urban Land (Ceiling and Regulation) Act and if it is so, whether the said subject matter could be sold only with the permission of the said authorities."

18. After noticing the contentions of either party, the learned single Judge further observed :-

> "7. On the other hand, as already pointed out, there is no evidence in clear cut terms to indicate that the plaintiff would become a person exceeding the ceiling limit under the said Act after purchase of the subject matter of the suit. This point is raised only at the time of arguments and nowhere either in the written statement or in the evidence, it is pleaded that the plaintiff also is prohibited from purchasing the subject matter of the suit within the meaning of proviso to sub section 3 of section 5 of the Act."

19. Thereafter the learned single Judge also observed that in the meantime the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 had been repealed by Act 20 of 1999 published in the Tamil Nadu Gazette dated 16.6.1999. Ultimately the learned single Judge concluded as follows :

> "10. However, the finding is recorded to the effect that the subject matter of the suit viz., 8 grounds and 2354 sqft factually stands as excess lands within the meaning of the Tamil Nadu Urban Land (Ceiling and Regulation) Act before it was repealed."

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20. Learned Senior Counsel appearing for the defendants / appellants has submitted that since the disputed land was in excess of the ceiling limit, in view of the opinion of the Full Bench, the decree for specific performance cannot be granted.

21. Learned Senior Counsel appearing for the plaintiff/ respondent has submitted that since such Act has been repealed, the question as to whether the defendant had land in excess of the ceiling area is immaterial as admittedly such land has not been vested with the Government and the defendants continued to be the owner thereof and, therefore, there is no present embargo to specifically enforce the agreement. It is also submitted by him that in view of the provisions contained in Section 5(3) of the Act, since admittedly a lay-out plan had been approved as contemplated in such provision, it cannot be said that the defendants had land in excess of the ceiling area and therefore there cannot be any embargo for specific performance of the contract.

22. Section 5(3), upon which reliance has been placed by the Senior Counsel for the plaintiff/respondent, is extracted hereunder :-

> "5(3) Notwithstanding anything contained in sub-section (1), where any person with the object of development of vacant land for sale by allotment of plots of land to others, has by himself, or through any other person, obtained before the commencement of this Act, the sanction of the appropriate authority for the layout of such vacant land held by such person, then the person so holding the land shall be entitled to continue to hold such vacant land;
>
> Provided that such person shall not transfer any such vacant land or part thereof by way of sale, mortgage, gift, lease or otherwise to any person who already owns a dwelling unit or any vacant land which together with the land to be transferred by that person would be in the aggregate exceed the ceiling limit of such transferee."

23. The contention of the learned Senior Counsel for the plaintiff / respondent is to the effect that with the object of developing the land by sale of allotment of plots of land to others, the sanction of the appropriate authority or lay out for such vacant land having been obtained before commencement of the State Act, the person holding such vacant land is entitled to continue to hold such vacant land and therefore it cannot be said that there was any question of vesting of any excess land or vacant land with the Government.

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24. In this connection, the learned Senior Counsel for the plaintiff / respondent has placed reliance upon the answer given by the defendant himself, wherein he has admitted that the suit property was the subject matter of a sanctioned lay-out and all such documents are available and marked as Exs.D-12 to D-55. He has further submitted that he had fulfilled all the conditions of the lay out regarding earth work, motalling, drainage and laying sewere. He has further stated that the lay out was sanctioned even before commencement of the Tamil Nadu Urban Land (Ceiling and Regulation) Act. On the basis of such statement made by the defendant, it can be well assumed that in fact there has been a sanctioned lay out of the vacant land. If that be so, obviously the owner of the land would be entitled to continue to hold such vacant land, even assuming that the vacant land is considered as excess land. This position is clear by virtue of Section 5(3) of the Act. However, what is the effect of the proviso remains to be examined.

25. Even though that question was raised before the learned single Judge, who was called upon to render finding during pendency of the appeal, the learned single Judge has observed that there was no evidence on record to indicate that the plaintiff was having any dwelling house or any land and therefore the embargo contained in the proviso may not be applicable. Learned single Judge further observed that the point was raised only at the time of argument and not raised in the written statement that the plaintiff was prohibited from purchasing the subject matter of the suit within the meaning of proviso to Section 5(3) of the Act.

26. So far as lack of pleading is concerned, it is obvious that the learned single Judge has omitted to consider the fact effect of paragraph 2 of the additional written statement filed by the defendants 1 and 2, wherein it was categorically stated that the plaintiff is not entitled to purchase more than the prescribed limitof 500 sq.metre under the provision of Tamil Nadu Urban Land Ceiling Act, and hence the agreement is void as violating the provisions of statute.

27. It is of course true that there is no evidence to show that the plaintiff, intended purchaser, already owns a dwelling unit or any vacant land. Let us assume that the plaintiff does not own any dwelling unit or a vacant land. A careful reading of the provisions contained in Section 5(3) along with the proviso indicates that the person holding vacant land in excess of the ceiling limit is entitled to hold such land if a layout sanction plan is available before commencement of the Act. However, such person, who is permitted to hold such vacant land, shall not transfer any such vacant land or part thereof to any person who already owns a dwelling unit or any vacant land "which together with the land to be

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transferred by that person would in the aggregate exceed the ceiling limit of such transferee".

28. In the present case, the land proposed to be transferred under the agreement is 8 grounds and 2354 sq.ft. The entire land is admittedly a vacant land. For the purpose of this case it is assumed that the plaintiff did not have any dwelling unit or any vacant land. If, instead of the agreement, the sale itself could have been effected in respect of 8 grounds 2354 sq.ft., the plaintiff would have become the owner of the said vacant land. In other words, the land transferred would have exceeded the ceiling limit of the transferee. The main provision contained in Section 5 (3) enables the person holding land in excess to continue to hold such land because the sanctioned lay out is available. However, the proviso indicates that he cannot sell such land if ultimately the lands in the hands of the transferee would exceed the ceiling limit of such transferee. It does not mean that wherever transferee is without any dwelling unit or does not own any vacant land, any extent of land could be sold to such person. The clear intention is that the person intending to purchase such property should not in the process acquire land in excess of his own ceiling limit. Any other interpretation would obviously defeat the very purpose of the proviso.

29. Therefore, in our opinion, even assuming that the intended purchaser did not have dwelling unit or vacant land, since the agreement of sale was in respect of vacant land, which would have in the aggregate exceeded the ceiling limit of the proposed transferee, the embargo contained in Section 5(3) proviso read with Section 6 was equally applicable.

30. Learned Senior Counsel for the respondent has submitted that since the Act has been repealed, these questions have become academic and, therefore, there is no present embargo to enforce the specific performance of the contract.

31. We have already extracted in extenso the different observations made by the Full Bench, which is the opinion rendered in a matter arising out of the present dispute. In such Full Bench decision, the earlier views expressed by several Division Bench decisions of this Court holding the agreement in contravention of the provisions of the Act to be invalid is obviously binding on us. At several places it has been indicated that such agreement is void. If the agreement was void at the inception, the subsequent repeal of the Act possibly may not have the effect of reviving such void agreement. Since such agreement has been considered to be against the Public Policy and void by the Full Bench, which opinion is obviously binding on us and also on the parties at least for the time being, we are unable to hold otherwise.

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32. However, even assuming that the learned Senior Counsel appearing for the respondent/plaintiff is correct, we would examine the aspect as to whether it would be equitable to confirm the decision relating to specific performance of the contract at this distant point of time.

33. Learned senior counsel for the plaintiff / respondent has submitted that the agreement as such need not be considered as void merely because such agreement is not enforceable for the time being while the Act was in operation and had remained eclipse and now that the Act has been repealed, such agreement revives in its entirety and therefore there is no embargo at present to enforce such agreement.

34. If this contention is accepted it would mean that during duration of the Act, i.e., till 1999, the agreement was not enforceable and such agreement could be specifically performed after 1999, when the Act was repealed. In other words, the court would be called upon to enforce the agreement after 19 years on the basis of a consideration which was fixed almost two decades back. It is of course true that there are many instances where such matters are pending before the Court for a long period and thereafter the Court passes a decree at trial stage or appellate stage for enforcement of the contract. But, such a position cannot be compared to the present case, wherein as per the opinion of the Full Bench such agreement was contrary to the Public Policy under Section 23 of the Indian Contract Act and was not enforceable, if not void. To enforce such an agreement after long lapse of time because of the subsequent event, namely, repeal of the Act, would not be equitable.

35. In this context, it would be more appropriate to indicate that during course of hearing, the learned Senior Counsel on the basis of the specific instructions of and in the presence of counsel on record had submitted that apart from Rs.4,40,000/-, which has been deposited in court and which has been invested in fixed deposit earning interest, the plaintiff/respondent is prepared to pay a further sum of Rs.1.25 Crore for completing the transaction. On the other hand, the learned Senior Counsel appearing for the defendants/appellants submitted that since the agreement itself contemplated payment of compensation/damages in case of default by the defendants, the court should instead of specifically enforcing the agreement, direct payment of compensation/damages to the plaintiff. Learned Senior Counsel on the basis of specific instructions and in the presence of counsel on record made a submission that the defendants/appellants are prepared to pay a consolidated compensation/damages of Rs.2 crores.

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36. It may be that the plaintiff, if permitted to purchase the property, it would develop the same and earn more profit than Rs.2 crores offered by the defendants / appellants. However, keeping in view the fact that the defendants are the original owners and weighing both the options, we feel interest of justice would be served by directing the defendants / appellants, on the basis of the concession of the counsels that the defendants/appellants shall be liable to pay a consolidated sum of Rs.2 crores as compensation/damages to the plaintiff, which would discharge their liability in full.

37. In view of the above conclusions, it is not necessary for us to go into other questions raised by the appellants to the effect that the plaintiff was not ready and willing to perform its part of the contract.

38. In the result, the appeal is allowed in part. The judgment and decree of the learned single Judge is modified and instead of decree for specific performance of the agreement, we direct that the defendants/appellants shall be liable to pay a sum of Rs.2 crores to the plaintiff, in discharge of their entire liability. Such amount should be paid or deposited in court on or before 31.3.2007, failing which such amount shall carry interest at the rate of 10% per annum thereafter. The amount deposited by the plaintiff is permitted to be withdrawn by the plaintiff along with the accrued interest. The parties shall bear their own costs throughout.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

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2.The Record-keeper, V.R. Section, High Court, Madras.

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